

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Misc.No.43752-M of 2005

Date of Decision: 1.8.2007.

Diksha Rani and another Vs. **Deep Chand**

Present: Mr.ADS Sukhija, Advocate,
for the petitioners.

None for the respondent.

RANJIT SINGH, J. (ORAL)

Diksha Rani, estranged wife of Deep Chand respondent, filed a petition under Section 125 Cr.P.C. for grant of maintenance for herself and her child, named, Rishav. On 22.3.2003, Sub-Divisional Judicial Magistrate, Kharar awarded an ad-interim maintenance of Rs.800/- per month to the wife and an amount of Rs.700/- per month to the child. The respondent-husband failed to honour the orders. The petitioners filed an application under Section 128(3) Cr.P.C. for enforcement of the order, referred to above. The respondent-husband was taken into custody for non-payment of the maintenance awarded by the court. However, after expiry of one month he was released on 20.2.2004, though he had not made any payment to the petitioners. The petitioners filed revision against this order, which is dismissed in default for want of prosecution on 6.7.2005. The present petition has been filed impugning the said order passed by Addl.Sessions Judge, Fast Track Court, Ropar.

Numerous efforts have been made to serve the respondent-husband. Even attempt was made to serve him through the counsel representing him before the trial court, but the respondent has been able to evade service somehow. Ultimately, he was served through his mother for 31.10.2006, but still he did not appear before this court. Thereafter another notice was served upon him, but still the respondent-husband has somehow evaded the service. He is not even appearing before the trial court.

I am of the considered view that the respondent is deliberately not appearing and is aware of the present proceedings pending against him before this court. He appears to have deliberately chosen to avoid appearance. This approach cannot be permitted and if allowed would effect the administration of justice. The petitioner-wife is fighting for survival and respondent-husband has been able to avoid payment despite orders by a court exercising valid jurisdiction.

Taking these special features into consideration and the fact that respondent had been served through his mother, I am of the view that he need not be served further. The revision filed by the petitioners was dismissed in default for non-prosecution as the petitioners could not put in appearance when the case was called on 6.7.2005. The technicalities cannot be allowed to stand in the way of administration of justice. The revisional court was bound to consider that this was a case where a wife and young small child were fighting to get maintenance from the husband. Despite order, the respondent-husband had refused to pay maintenance. He is seen to be violating the orders of the court. He was rightly taken into custody, but was

ordered to be released. The counsel for the petitioners is justified in referring to the observations made by the Hon'ble Supreme Court in **Smt.Kuldip Kaur v. Surinder Singh and another, AIR 1989 Supreme Court 232** wherein the husband refusing to pay maintenance was directed to be kept in custody till the arrears were recovered from him. Dismissing the revision petition in default filed by the petitioners, in my view, has resulted in injustice to the petitioners and cannot be justified. The present petition is accordingly allowed and the impugned order is quashed. The case is remanded back to the revisional court to consider and decide the same on merits. Needless to mention that the revisional court would make efforts to secure the presence of the respondent in a manner considered appropriate including if he has to be taken in custody to ensure that he is required to comply with the directions passed by this court. In this regard, the observations of the Hon'ble Supreme Court in **Smt.Kuldip Kaur's case (supra)** be kept in view.

August 01, 2007
ramesh

(RANJIT SINGH)
JUDGE